

BURKE, WILLIAMS & SORESENSEN, LLP  
Richard J. Reynolds, Bar No. 89911  
Rafael R. Garcia-Salgado, Bar No. 283230  
1851 East First Street  
Suite 1550  
Santa Ana, CA 92705-4067  
Telephone: 949.863.3363  
Facsimile: 949.863.3350

Attorneys for Creditor  
TROJAN CAPITAL INVESTMENTS, LLC

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL JOSEPH RUFFNER

Debtor,

Case No. 8:17-bk-14421-ES

Chapter Number: 7

**MOTION FOR ORDER FOR  
EXAMINATION OF INTERNAL  
REVENUE SERVICE PURSUANT TO  
BANKRUPTCY RULE 2004, AND FOR  
INSPECTION OF DOCUMENTS;  
SUPPORTING DECLARATION AND  
LOCAL RULE 2004-1 CERTIFICATION  
OF RAFAEL GARCIA-SALGADO**

[NO HEARING REQUIRED]

**TO THE HONORABLE ERITHE SMITH, UNITED STATES BANKRUPTCY JUDGE,  
AND TO ALL INTERESTED PARTIES:**

TROJAN CAPITAL INVESTMENTS, LLC ("Movant") hereby moves (the "Motion") the Court pursuant to Federal Rule of Bankruptcy Procedure 2004 ("Rule 2004") for an Order directing the attendance of the Internal Revenue Service (the "IRS") at an examination pursuant to Rule 2004(d), including the production of documents, and in support thereof hereby states as follows:

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 1334, 157(a) and F.R.B.P. Rule 2002. Movant alleges that this is a core proceeding pursuant to 28 U.S.C.

1 §§ 157(b)(2)(A), (B), (L), and (O).

2 2. Movant is a creditor of the Debtor. It is the current holder of the Second Deed of  
3 Trust against Debtor's residence. Therefore, Movant is a party in interest pursuant to F.R.B.P.  
4 Rule 2002(a).

5 3. The IRS is a governmental entity, and Movant is informed and believes that the  
6 IRS's place of business is 1111 Constitution Avenue, NW, Washington, DC 20224.

7 4. An examination of the Internal Revenue Service is necessary to obtain information  
8 regarding the following subjects for the years 2006 through 2008: (1) the Debtor's acts, conduct,  
9 and property; (2) the Debtor's income, liabilities and financial condition; and (3) the conduct of  
10 the Debtor's business and finances to determine if secured and unsecured creditors were paid  
11 properly.

12 5. To assist in the Bankruptcy Rule 2004 examination of the Debtor, it is necessary  
13 for the Debtor to produce or otherwise make available, not less than three (3) business days prior  
14 to their examination, relevant records and documents which are in his possession or under his  
15 control, and which are described in Exhibit "A" attached hereto and incorporated herein by this  
16 reference.

17 **ARGUMENT**

18 6. "[O]ne of the fundamental concepts of bankruptcy law" is "the concept that full  
19 and adequate disclosure is the 'price' the debtor in bankruptcy pays for the benefit of discharge."  
20 *In re Hammond*, 140 B.R. 197, 202 (S.D. Ohio 1992). To that end, "[t]he scope of inquiry under  
21 Bankruptcy Rule 2004 is very broad. Great latitude of inquiry is ordinarily permitted." *In re*  
22 *Roman Catholic Church of the Diocese of Gallup*, 513 B.R. 761, 764 (Bankr. D. N.M. 2014)  
23 (quoting *In re Handy Andy Home Improvement Centers, Inc.*, 199 B.R. 376, 378 (Bankr. N.D. Ill.  
24 1996)). Examination under Rule 2004 "is designed to be a quick 'fishing expedition' into general  
25 matters and issues regarding the administration of the bankruptcy case." *Id.* (quoting *In re*  
26 *French*, 145 B.R. 991, 992 (Bankr. D. S.D. 1992)). "[B]ecause Rule 2004 examinations are taken  
27 pre-litigation they need not be tied to specific factual allegations, and are subject to fewer  
28 objections on grounds of relevance." *Id.* (citing *In re Symington*, 209 B.R. 678, 684 (Bankr. D.

1 Md. 1997)). Further, Rule 2004 “extends to third parties who deal with the debtor.” *Olsen v.*  
2 *Rupp (In re Olsen)*, No. UT-98-088, 1999 Bankr. LEXIS 791 (B.A.P. 10th Cir. 1999) (citing *In re*  
3 *Wilcher*, 56 B.R. 428, 433 (Bankr. N.D. Ill. 1985)).

4 7. A Rule 2004 examination of the IRS is necessary to determine whether the Debtor  
5 actually paid off his loan to Trojan’s predecessor-in-interest in 2007, as the Debtor has so  
6 claimed.

7 8. The Debtor submitted a questionable substitute Form 1098 in connection with his  
8 opposition to Trojan’s motion for relief from stay. This substitute form contained multiple fields  
9 that are not included in the IRS Form 1098. Trojan needs to determine whether the Debtor’s tax  
10 filings actually reflected a loan payoff in the year the Debtor alleges.

11 10. This Motion contains two limited document requests, is narrowly tailored to the  
12 years around the Debtor’s acquisition of a loan from Trojan’s predecessor (and subsequent  
13 alleged payoff), and falls squarely within the Debtor’s duty to his creditors and the Court to  
14 disclose his financial affairs, including, but not limited to, the Debtor’s prepetition dealings with  
15 secured creditors.

16 11. **Local Rule 2004-1 Certification.** In an effort to avoid filing this Motion,  
17 undersigned counsel contacted Debtor’s counsel informally to request that he take the lead on  
18 Rule 2004 document discovery in this case with regard to the Debtor’s alleged prepetition payoff.  
19 Debtor’s counsel in fact told the Court he would do so at the February 1, 2018 hearing on  
20 Trojan’s motion for relief from stay. However, Debtor’s counsel has not cooperated, and has  
21 made no attempt to request any documents. All told, undersigned counsel has been in contact  
22 with Debtor’s counsel trying to get document production ordered for this case the entire month of  
23 February.

24 12. Debtor’s counsel has now moved to withdraw from this case due to the Debtor’s  
25 nonpayment of legal fees [Docket No. 36].

26 13. Movant properly requests a Rule 2004 examination at the office of counsel for  
27 Movant in Orange County, CA. Rule 2004(a), titled “Examination on Motion,” allows  
28 “examination of any entity.” Further, a Rule 2004 exam may be “at any time or place.” *In re*

1 *Little's Motor Co., Inc.*, 53 B.R. 635, 638 (Bankr. N.D. Ala. 1985) (requiring a debtor's principal  
2 to travel "in excess of 600 miles" for a Rule 2004 exam). Rule 2004(e) clarifies that any entity  
3 may be required to attend a Rule 2004 examination so long as it is paid "lawful mileage and  
4 witness fee."


5 WHEREFORE, Movant respectfully requests an Order as follows:

6 1. That the Internal Revenue Service appear for an examination pursuant to  
7 Bankruptcy Rule 2004, to commence **March 23, 2018, at 9:00 a.m.**, and to continue as necessary  
8 until completed, at the offices of Burke, Williams, & Sorensen, LLP, 1851 E. 1<sup>st</sup> Street, Suite  
9 1550, Santa Ana, CA 92705-4067.

10 2. That the Internal Revenue Service is ordered to produce or otherwise make  
11 available, not less than three (3) business days prior to his examination, relevant records and  
12 documents which are in its possession or under its control, and which are described in Exhibit  
13 "A" attached hereto and incorporated herein by this reference.

14  
15 Dated: February 26, 2018

BURKE, WILLIAMS & SORENSEN, LLP

16  
17  
18 By:   
19 Richard J. Reynolds  
20 Rafael R. Garcia-Salgado  
21 Attorneys for Creditor  
22 TROJAN CAPITAL INVESTMENTS,  
23 LLC  
24  
25  
26  
27  
28

DECLARATION OF RAFAEL R. GARCIA-SALGADO

I, Rafael R. Garcia-Salgado hereby declare as follows:

1. I am a resident of Orange County, California, and am over eighteen years of age. I am an attorney licensed to practice under the laws of the State of California, and am admitted to practice before the federal courts of the Southern, Central, Eastern, and Northern Districts of California. I am an associate with the law firm of Burke, Williams & Sorensen, LLP, attorneys for TROJAN CAPITAL INVESTMENTS, LLC ("Movant"). I have personal knowledge of the facts stated in this Declaration, except as to those matters stated on information and belief, and as to those matters I believe them to be true. If called upon to testify as to the contents of this Declaration, I could and would competently testify thereto.

2. Movant is a creditor of the Debtor.

3. The Debtor is an individual and Movant is informed and believes that the Debtor's residence address is 4829 Camino Costado, San Clemente, CA 92673.

4. An examination of the Internal Revenue Service is necessary to obtain information regarding the Debtor's prepetition dealings with his secured lenders.

5. **Local Rule 2004-1 Certification.** In an effort to avoid filing this Motion, I contacted Debtor's counsel informally to request that he take the lead on Rule 2004 document discovery in this case with regard to the Debtor's alleged prepetition payoff. Debtor's counsel in fact told the Court he would do so at the February 1, 2018 hearing on Trojan's motion for relief from stay. However, Debtor's counsel has not cooperated, and has made no attempt to request any documents. All told, I have been in contact with Debtor's counsel trying to get document production ordered for this case the entire month of February.

6. To assist in the Bankruptcy Rule 2004 examination of the Internal Revenue Service, it is necessary for the Internal Revenue Service to produce or otherwise make available, not less than three (3) business days prior to its examination, relevant records and documents which are in its possession or under its control, and which are described in Exhibit "A" attached hereto and incorporated herein by this reference.

7. The examination of the Internal Revenue Service under the procedure set out in

1 Bankruptcy Rules 7030 or 9014 is not possible as there is no pending adversary proceeding or  
2 contested matter between the IRS and Movant. The location of the examination, i.e., the Orange  
3 County office of Burke, Williams & Sorensen, LLP, is within the district and within the area in  
4 which the IRS conducts business.

5 I declare, under penalty of perjury under the laws of the United States that the statements  
6 made in the foregoing declaration are true and correct, except those matters stated on information  
7 and belief, and as to those matters, I believe them to be true.

8 Executed this 26<sup>th</sup> day of February 2018, at Santa Ana, California.

9  
10   
11 RAFAEL R. GARCIA-SALGADO  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT "A"**

**DEFINITIONS**

1. YOU and/or YOU OR ANYONE ACTING ON YOUR BEHALF, refers to and includes the Internal Revenue Service, the United States Government, and YOUR agents, employees, insurance companies, agents, adjusters, and employees, attorneys, accountants, investigators, employees, and agents and anyone else acting on YOUR behalf.

2. PERSON and/or PERSONS refer to and include a natural person, firm, association, organization, joint venture, sole proprietorship, partnership, business, trust, corporation, public entity, or any other artificial business or entity.

3. As used herein, the singular shall be interchangeable with the plural; the masculine, feminine, and neuter shall all be interchangeable, and the conjunctions "and" and "or" shall be both conjunctive and disjunctive.

4. DOCUMENT is used herein in its broadest sense and refers to and includes the original and all copies of any kind of all handwritings, typewritings, printings, photostats, writings, photographs, tapes, films, negatives, pictures, videos, recordings, letters, telegrams, diagrams, drawings, surveys, maps, contracts, checks, drafts, invoices, bills receipts, charts, tabulations, audits, computer records (including computer printouts, the contents of computer memory, computer programs, and any instructions or interpretive materials associated with them), plans, memos, notes, notes or any records of all communications (including meetings, telephone and any other conversations), logs, calendar and diary entries reports, interoffice communications, tax returns, journals, documents, medical and other records, and every other means of recording upon any tangible thing, and any form of communication or representation, including letters, words, pictures, sounds and symbols, electronic storage, memorialization, or transmissions, and/or combinations of them. Also included are all copies of any writings which are not completely identical duplicates of the originals (e.g., because handwritten or other notes appear thereon or are attached thereto). (Included are all items described in California Evidence Code Section 250).

5. COMMUNICATION refers to and includes all forms of written, electronic, verbal

1 and oral communications, including spoken words, gestures, and sign language.

2 GENERAL INSTRUCTIONS

3 1. YOU are required to produce all DOCUMENTS designated below which are in  
4 YOUR possession, custody, or control, or in the possession, custody or control of YOUR agents,  
5 attorneys, employees or representatives.

6 2. YOU are required to produce the original and all non-identical copies of each  
7 DOCUMENT requested. If YOU are not able to produce the original of any DOCUMENT, then  
8 you must produce the best available copy and all non-identical copies.

9 3. If YOU claim any privilege, based upon a statute or otherwise, as a ground for not  
10 producing a DOCUMENT or any portion thereof, you must provide a log identifying each  
11 DOCUMENT for which YOU claim such a privilege in sufficient detail to identify the particular  
12 DOCUMENT without revealing the information which is claimed to be privileged, the following:

- 13 a. identify the privilege;  
14 b. the general subject matter of the DOCUMENT;  
15 c. the identity of the author, the originator, addressee and all recipients of the  
16 DOCUMENTS;  
17 d. the date of the DOCUMENT;  
18 e. the title, if any, of the DOCUMENTS; and  
19 f. each and every fact upon which YOU rely in asserting the privilege.  
20  
21  
22  
23  
24  
25  
26  
27  
28



DOCUMENTS TO BE PRODUCED AND TOPICS FOR EXAMINATION

DOCUMENT REQUEST NO. 1:

All DOCUMENTS submitted by Michael Joseph Ruffner, an individual with a Social Security Number ending in 5931 ("Ruffner"), for the period from 2006 through 2009, including, but not limited to, the following original documents:

a. all federal income tax returns, tax worksheets, and other supporting documentation, including returns for any other federal taxes assessed against and/or paid by Ruffner.

b. all COMMUNICATIONs between YOU and Ruffner, or between YOU and Ruffner's agents, employees, insurance companies, agents, adjusters, and employees, attorneys, accountants, investigators, or anyone else acting on Ruffner's behalf.

c. all other DOCUMENTS of any kind whatsoever which evidence same.

DOCUMENT REQUEST NO. 2:

All DOCUMENTS submitted to YOU by any entity regarding or concerning Ruffner and/or 4829 Camino Costado, San Clemente, CA 92673, for the period from 2006 through 2009, including, but not limited to, the following original documents:

a. all mortgage interest statements, including both original and substitute versions of Form 1098.

b. all other DOCUMENTS of any kind whatsoever.

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**1851 E. First Street, Suite 1550, Santa Ana, CA 92705**

A true and correct copy of the foregoing document entitled (*specify*):

**MOTION FOR ORDER FOR EXAMINATION OF INTERNAL REVENUE SERVICE PURSUANT TO BANKRUPTCY RULE 2004, AND FOR INSPECTION OF DOCUMENTS; DECLARATION OF RAFAEL R. GARCIA-SALGADO IN SUPPORT**

will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 2/26/18, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Brian C Andrews elizabeth@briancandrews.com,  
andrewslawgroupinc@gmail.com;r44711@notify.bestcase.com
- Thomas H Casey (TR) msilva@tomcaseylaw.com, thc@trustesolutions.net
- Rafael R Garcia-Salgado rgarcia@bwslaw.com, bantle@bwslaw.com,rjr-  
nef@bwslaw.com
- Richard J Reynolds rreynolds@bwslaw.com,  
psoeffner@bwslaw.com,tmims@bwslaw.com,rjr-  
nef@bwslaw.com;fcabezas@bwslaw.com
- Andrew A Smits , kimberly@smits-law.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
- Gilbert R Yabes ecfcacb@aldridgepite.com,  
GRY@ecf.inforruptcy.com;gyabes@aldridgepite.com

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) 2/26/18, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

***Debtor***

**Michael Joseph Ruffner**  
4829 Camino Costado  
San Clemente, CA 92673

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

**2/26/18**

Bernadette C. Antle

*Date*

*Printed Name*

  
*Signature*